

PLANNING CONSIDERATIONS
for
Connor Law Firm Client

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Foreword

My office has assisted hundreds of families with asset protection planning and developing family legacies for more than ten years. Based on countless lifetime experiences and legal consultations, I thought it would be helpful to compile a list of “frequently asked questions” and definitions to give to clients as a resource.

The information in this “Planning Considerations” packet is not intended to be legal advice or to substitute for legal advice. Furthermore, it is not designed to influence your decisions and some considerations may not fit your moral, religious or personal beliefs. You should not feel compelled to accept an idea just because I have used it for a prior client. It is simply meant to enlighten you to questions you may not asked yourself or offer you solutions to questions you already have in mind.

I hope you find it educational and informative to review the following thoughts and reflections from my legal background and personal history. If you have a question that isn’t answered, jot it down and I will answer it for you during your consultation.

All of my experience in estate planning and working with our clients continues to impress upon me what a great privilege it is to plan a family’s estate. After all, when clients come to us they entrust us with all of their worldly wealth and ask us to make sure it’s preserved, not only for their use but for generations to come. Our firm is dedicated to that purpose and we are honored to work with you.

Jonathan S. Connor
Attorney at Law

Planning Considerations

I. Distribution of Estate

One of the primary goals of your will is to express your intentions as to whom you want your estate to be distributed, i.e. who will be the “beneficiaries” of your estate. In making this decision, it is important to keep in mind the following items:

- Do you want specific individuals to have certain personal and household effects? For example, is there a specific item of jewelry you want to go to a specific person?
- To whom do you want the balance of your personal property transferred, including items such as furniture, household goods, china, automobiles, and other personal items?
- After distribution of the above personal items and specific bequests, who do you want receive the remainder of your estate? This is the “catchall” for all of the items you do not specifically gift in the preceding paragraphs.

In distributing the estate, an obvious concern is gifts to minor children. In that event, some form of trust is typically recommended to hold the property for the benefit of the minor child(ren). For now, simply think about who you may want to name as the person responsible for administering the funds to your children (the “Trustee”).

In addition, you will want to begin investigating certain possibilities, however remote they may be. For example, start thinking about the following:

- In the event you and your primary beneficiaries (typically your children) have all passed away, who would you like to receive your assets?
- Do you want your estate to pay off any debts or liabilities associated with a particular asset prior to it being received by a beneficiary? For example, should your estate pay off the mortgage on a house prior to it being received by a beneficiary?

II. Executor/Executrix of Probate Estate

The “probate process” begins with the filing of an application to probate your will filed by a qualified person, typically the person you designate as the executor or executrix of your estate. Your “probate estate” generally consists of all of the assets that will pass by your will through the probate process and will vary depending on the type of will drafted. In essence, and for purposes of these instructions, it is comprised of the property that will be passing to the beneficiaries you designate in your will. It does not include items that are “non-

probate” assets, such as life insurance proceeds.

The person responsible for the administration of the probate estate is the “executor”, in the event the person is male, or the “executrix” in the event the person is a female. For ease of discussion, we will refer to the person as the “executor” and will use the male gender in describing the person for the remainder of this document.

Generally, in considering whom you will designate as an executor of your estate you will need to consider whether or not he qualifies for the position and whether or not you feel he is appropriate given the responsibility of the position and its requirements.

First, consider whether or not the person will legally qualify. In general, he must meet the following requirements:

- The person must be at least eighteen (18) years old at the time of appointment. If you want your seventeen (17) year old son to serve (which may or may not be appropriate), you can designate him as the executor of your estate but he will not qualify until he reaches the age of eighteen (18). Obviously, you don’t want to name your newborn for this position.
- The person cannot be insane or “mentally impaired”. Mental impairment is subjective but common sense should dictate whether a person is appropriate under this standard.
- The person cannot be convicted of a felony. There are certain exceptions regarding pardons and appeals, but the person generally should not be considered for various, and obvious, reasons.
- A non-resident of Texas can serve but he must designate an agent for service of process here in the State of Texas. In essence, the state does not want to make it difficult for the court or the parties to serve documents on the executor and therefore state statute requires an agent be appointed. There are times this person should be considered despite being out of state due to intimate knowledge of the estate or his relationship to you. He will need to be available for travel to Texas under certain circumstances.
- Resident aliens may serve as executor of your estate.
- “Unsuitable persons” is the basic catchall left to the discretion of the court in denying appointment of a person as executor. This is relatively new phraseology that is subjective, but needs to be considered in choosing your executor.

Second, consider what the person will be doing as the administrator of your estate when choosing him for the position of executor. The executor has a

fiduciary duty to your estate and will be responsible for its administration, perhaps with little court supervision. Consider the following:

- The executor named may decline to serve in that capacity. It is highly recommended that you discuss his appointment prior to designating him in your will. We recommend you provided him with a copy of these instructions so he is aware of what will be required of him in the future. Persons have declined in the past due to the level of responsibility or the fact they were unaware of the designation. If he declines, another "interested person", including a creditor of yours, may apply for probate of the estate.
- The executor has a fiduciary duty to your estate. He will be responsible for defending lawsuits against the estate and prosecuting lawsuits on behalf of the estate; he must keep and render accounts; he must preserve the assets of the estate; generally, he must do whatever a person in this position of trust would do in order to administer, protect and defend the probate estate.
- He may employ an attorney to represent him in probating the estate and bind the estate for the attorney's fees. He may also employ other professionals, such as accountants, to assist with the administration of the estate.
- He must notify creditors of the estate that an application for administration has been filed and allow the creditors an opportunity to assert their claims to the estate.
- He must prepare and file with the court, under most circumstances, an inventory, appraisal and accounting of the estate.
- He must generally perform any act relating to the settlement of the estate, including distribution of the estate according to your will, payment of debts of the estate, and selling property of the estate.

Based on this information, after you have decided who would be appropriate for the position, you must also answer the following questions relating to your estate:

- Will you require the person to post a bond if appointed executor? Your will can dictate whether or not a bond is necessary and an amount for the bond determined by the court if you request a bond. The bond is posted to insure that the estate is protected, much like purchasing insurance to protect your car or home.
- Will you request an independent or dependent administration? Texas is one state that allows independent administration that basically limits court supervision and involvement in the probate process. The benefit is it typically costs less money in attorney's fees and costs to administer and allows the executor to work with less supervision. The negative is it does

limit the protection of the court over the estate. The court will still review the inventory and have to approve it prior to the closing of the estate but your executor will not need to get a court order to, for example, sell real estate.

- Will your executor be entitled to reasonable compensation? Reasonable compensation includes time and expenses for administering the estate.

III. Guardianship of Children (for those with minor children)

For those of you who have minor children, it is important to name a guardian, or guardians, for your children in the event both of you have passed. This is obviously a very personal and difficult decision to wrestle with, and you will need to keep several items in mind. For example:

- You may name a married couple (according to the laws of Texas) as guardians of your child(ren) or you may name an individual. However, you may not name two guardians to serve as co-guardians if they are not a married couple.
- You need to consider the possibility of a divorce, or the death of one of the guardians, and with whom you will want your child(ren) to live after the divorce or death of one of the guardians. You may want the remaining individual to continue as guardian, or another individual or couple to serve at that time.
- The person named as guardian does not have to be the trustee of the estate of the children.
- Consider where the guardian(s) live(s) and whether you want the children to be moved out of the city, or out of state, in the event that is where the guardian(s) reside(s).

GENERAL INFORMATION

The following information relates to persons who will likely be serving as an agent designated in one of the documents in your estate plan. This is broad, general information and should not be construed as legal advice or as totally inclusive. You must review the information with an attorney for a full understanding of the material provided.

Executor/Executrix:

This is the person designated in your will to administer your estate. In general, the person is in a fiduciary capacity, much like a trustee described below, and gathers your assets, pays your creditors and the creditors of your estate, and distributes the remaining property to the beneficiaries you have designated in your will.

The person is entitled to apply to probate your will with the court, which requires an application to be filed and an order of the court that will permit the executor/executrix to administer your estate. The person is obligated to defend lawsuits against the estate, prosecute lawsuits on behalf of the estate, keep and render an accounting, sell property, and do whatever is necessary to preserve the estate and distribute it to your beneficiaries. Typically, the person will employ an attorney to represent him/her, and may also employ accountants and other professionals if necessary for the administration of the estate.

The executor/executrix is in a position of trust and is obligated to follow the terms outlined in your will. They serve in that capacity until the court approves an inventory and the estate is closed.

Trustee:

The trustee is the person who may be named in your will, or trust agreement, to act as a “manager” of any trust assets that are being held in trust. In general, they sit in a fiduciary position and follow the directions set out in the terms of the trust. They will be responsible for making distributions, for preparing an accounting of the funds, and for any other responsibilities related to the assets in the trust. They are also bound by language found in the Texas Trust Code, which is too voluminous to include here, but should be reviewed by the Trustee prior to acting under the trust agreement.

Agent:

The agent named in your statutory durable power of attorney (dealing with financial decisions) and in your medical power of attorney (dealing with medical decisions) is acting as the person making financial and medical decisions on your behalf because you are physically or mentally unable to do so. They are in a position of high responsibility in that they are making decisions, sometimes quite often, that are subjective and in your best interest. They can have the ability to open and close bank accounts, change beneficiaries on life insurance policies, and sign your tax returns. However, they cannot do anything that would damage your estate or do something that a reasonable person would not do under similar circumstances.

It is important you trust this person completely, but they can be removed for improper conduct and even sued for breach of their duties. You can also limit their powers in your power of attorney, if necessary.